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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JUAN FLORES-MENDEZ, an individual and
AMBER COLLINS, an individual, and on
behalf of classes of similarly situated
individuals,

Plaintiffs,

v.

ZOOSK, INC., a Delaware corporation; and
SPARK NETWORKS SE, a German
corporation,

Defendants.

Case No. 3:20-cv-04929-WHA

**STIPULATION AND ~~PROPOSED~~
ORDER STAYING CASE FOR 90 DAYS
DUE TO COVID-19 RELATED
JURISDICTIONAL DISCOVERY
DELAYS**

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1 WHEREAS on January 30, 2021, the Court held in abeyance Defendant Spark Networks
2 SE's ("Spark") motion to dismiss for lack of personal jurisdiction pending jurisdictional discovery
3 and ordered that Plaintiffs may take up to three depositions of seven hours each (ECF No. 61);

4 WHEREAS, the Court set a deadline of April 1, 2021 for supplemental briefing by Plaintiffs
5 regarding jurisdiction over Spark (ECF No. 61);

6 WHEREAS, on February 17, 2021, Plaintiffs noticed the depositions of Gitte Bendzulla,
7 Benjamin Hoskins, and Grant Kessler (the "Witnesses") for March 24, 25, and 26, 2021,
8 respectively;

9 WHEREAS, the Witnesses were identified by Spark as having discoverable information in
10 its Amended Initial Disclosures dated February 5, 2021;

11 WHEREAS, the deposition notices state that the depositions are to occur at the law office
12 of Bradley/Grombacher LLP, 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361;

13 WHEREAS, when Plaintiffs served these deposition notices they stated that they
14 "expect[ed] to meet and confer regarding the location and mechanism of the deposition, e.g. by
15 Zoom or other videoconference medium[.]" although Plaintiffs maintain that the noticed location
16 was proper and that the Court has the authority to order the Witnesses to appear in Los Angeles,
17 while Spark disputes the propriety of the Witnesses' being noticed or ordered to appear in Los
18 Angeles for deposition;

19 WHEREAS, the Witnesses are all residents of Germany and all of the individuals identified
20 by Spark in its Amended Initial Disclosures as having discoverable information are residents of
21 Germany.

22 WHEREAS, due to travel restrictions and the increased health risk associated with travel
23 during the COVID-19 pandemic, it would be either impossible or unduly burdensome for the
24 Witnesses to travel outside Germany or for counsel for the parties to travel to Germany for purposes
25 of depositions of the Witnesses being taken;

26 WHEREAS, the parties conferred and Spark agreed to make the Witnesses available for
27 remote deposition in Germany via Zoom on the noticed dates;

28 WHEREAS, on March 16, 2021, counsel for Spark advised Plaintiffs that it had learned

German law prohibits the taking of depositions in Germany for purposes of a US litigation except at the U.S. Consulate General in Frankfurt, Germany, under threat of criminal penalties against the participants in unauthorized depositions. *See, e.g., MACOM Tech. Sols. Holdings, Inc. v. Infineon Techs. AG*, No. CV162859CASPLAX, 2017 WL 2999036, at *3–4 (C.D. Cal. May 25, 2017) (“the United States State Department has indicated that taking a deposition in Germany without the prior approval of the German Ministry of Justice and/or without the involvement of the United States Mission may lead to criminal penalties against the participants”);

WHEREAS, the U.S. Consulate General in Frankfurt, Germany is not currently permitting parties to conduct or schedule depositions in Germany;

WHEREAS, under Fed. R. Civ. P 30(b)(4) a deposition taken by remote means is deemed to take place where the deponent answers the questions;

WHEREAS, Plaintiffs and Spark therefore cannot both comply with German law and complete the depositions noticed by Plaintiffs pursuant to the Court’s January 30 Order prior to the April 1 supplemental briefing deadline set forth in that Order;

WHEREAS, the parties have accordingly concluded that given the current circumstances it is not possible for the Witnesses to give deposition testimony prior to April 1, 2021;

WHEREAS, the parties have worked and will continue to work cooperatively in a good faith effort to agree upon either (a) a mechanism for taking depositions of the Witnesses in Germany in a manner that is safe, not unduly burdensome to the parties or the Witnesses, and not in violation of German law or (b) a workaround solution whereby Plaintiffs could obtain sworn testimony from the Witnesses by some means that is safe and not unduly burdensome to the parties or the Witnesses, other than by taking depositions of the Witnesses in Germany or (c) some other workaround solution whereby Plaintiffs could obtain equivalent discovery by some means, other than by taking depositions of the Witnesses, that is safe and not unduly burdensome to the parties or the Witnesses;

WHEREAS, by agreeing to work cooperatively in the manner described above, no party is thereby agreeing that any of the approaches specified above is or will be an appropriate approach for addressing the current inability of the Witnesses to give deposition testimony, and all parties

1 reserve their rights to object to any of the approaches specified above and any other approach
 2 should an agreement of the sort contemplated above not be reached by the parties and should the
 3 Court need to resolve the matter of how to address the current inability of the Witnesses to give
 4 deposition testimony;

5 WHEREAS, the European Union has recently proposed loosening travel restrictions in the
 6 near future ([https://www.npr.org/2021/03/17/978188017/eu-officials-propose-digital-travel-](https://www.npr.org/2021/03/17/978188017/eu-officials-propose-digital-travel-certificates-vaccination-not-required)
 7 [certificates-vaccination-not-required](https://www.npr.org/2021/03/17/978188017/eu-officials-propose-digital-travel-certificates-vaccination-not-required));

8 WHEREAS, the parties believe that a stay of 90 days will likely allow the parties to reach
 9 an agreement whereby depositions of the Witnesses can be taken in Germany or a workaround
 10 solution can be implemented during the period of the stay;

11 WHEREAS, the parties agree to a commensurate 90-day extension of all other case
 12 deadlines;

13 WHEREAS, Plaintiffs have agreed, subject to the Court's approval of this Stipulation, to
 14 postpone the depositions of the Witnesses *sine die*, subject to the parties further conferring during
 15 the course of the stay as described above, and without prejudice to any right Spark or the Witnesses
 16 might have to object to such depositions as noticed by Plaintiffs; and

17 WHEREAS, this is the parties' first request for any such extensions;

18 THE PARTIES THEREFORE STIPULATE AS FOLLOWS:

19 1. Subject to further Order of the Court, the case is stayed for 90 days as to all matters
 20 except the jurisdictional discovery permitted by the Court in its January 30, 2021 Order.

21 2. Subject to further Order of the Court, all case deadlines are extended by 90 days (or
 22 to the next soonest date on which such event can be held) as follows:

	Current Deadline	New Deadline
24 Plaintiffs' Supplemental Brief 25 on Personal Jurisdiction	April 1, 2021 at noon	June 30, 2021 at noon
26 Defendants' Response Brief	April 8, 2021 at noon	July 7, 2021 at noon
27 Leave to Add New Parties or 28 to Amend Pleadings	April 29, 2021	July 28, 2021

1	Motion for Class Certification	September 9, 2021	December 8, 2021
2	Non-Expert Discovery Cut-Off	March 4, 2022	June 2, 2022
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4	Opening Expert Reports	March 4, 2022	June 2, 2022
5	Opposition Expert Reports	March 18, 2022	June 16, 2022
6	Reply Expert Reports	March 25, 2022	June 23, 2022
7	Expert Discovery Cut-Off	April 8, 2022	July 7, 2022
8	Dispositive Motion Deadline	April 7, 2022	July 6, 2022
9	Final Pre-Trial Conference	June 8, 2022	September 7, 2022 (91 days)
10	Jury Trial Commences	June 13, 2022	September 12, 2022 (91 days)
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1 Dated: March 21, 2021

DOUGLAS H. MEAL
Orrick, Herrington & Sutcliffe LLP

2
3 By: /s/ Douglas H. Meal

4 DOUGLAS H. MEAL
5 Attorneys for Defendants
6 ZOOSK INC. and SPARK NETWORKS
SE

7 Dated: March 21, 2021

KILEY L. GROMBACHER
Bradley/Grombacher LLP

8
9 By: /s/ Kiley L. Grombacher

10 KILEY L. GROMBACHER
11 Attorneys for Plaintiffs
12 and the Putative Class
13

14 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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16 Dated: March 22, 2021.

17 By: 

18 UNITED STATES DISTRICT JUDGE
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